

**PT 98-51**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>ALLEN BEVENUE POST 354</b>	)		
<b>AMERICAN LEGION OF ALTON</b>	)	<b>Docket #</b>	<b>96-60-151</b>
<b>Applicant</b>	)		
	)		
<b>v.</b>	)	<b>Parcel Index #</b>	<b>23-2-07-01-13-301-031</b>
	)		
	)		
	)	<b>Barbara S. Rowe</b>	
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Administrative Law Judge</b>	
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Philip B. Alfeld, Attorney at Law, for Allen Bevenue Post 354, American Legion of Alton.

Synopsis:

The hearing in this matter was held at 1100 Eastport Plaza Drive, Collinsville, Illinois on October 17, 1997, to determine whether or not Madison County Parcel Index No. 23-2-07-1-13-301-031 qualified for exemption during the 1996 assessment year.

Joseph N. Berry, Adjutant and Secretary; DeLoyce McMurray, Commander; and Fred O. Young, Treasurer, of Allen Bevenue Post #354, American Legion of Alton (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel

during the 1996 assessment year; secondly, whether the applicant is a veteran's organization; and lastly, whether the parcel was used by the applicant primarily for charitable purposes which were civic and patriotic, during the 1996 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant was the owner of the parcel during the entire 1996 assessment year. It is also determined that the applicant is a veteran's organization. Finally, it is determined that the applicant did not use the parcel primarily for charitable purposes, which were also civic and patriotic during the 1996 assessment year. It is therefore recommended that Madison County Parcel Index No. 23-2-07-01-13-301-031 remain on the tax rolls for the 1996 tax year and be assessed to the applicant.

Findings of Fact:

1. The jurisdiction and position of the Department that Madison County Parcel Index No. 23-2-07-01-13-301-031 did not qualify for a property tax exemption for the 1996 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 4. (Tr. p. 9)

2. On May 7, 1997, the Department received a property tax exemption application from the Madison County Board of Review for Permanent Parcel Index No. 23-2-07-01-13-301-031. The applicant had submitted the request and the Madison County Board of Review recommended that the Department deny the exemption for the 1996 assessment year. The Department assigned Docket No. 96-60-151 to the application. (Dept. Grp. Ex. No. 2)

3. On July 24, 1997, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department of Transportation building, 1100 Eastport Plaza Drive, Collinsville, Illinois, on October 17, 1997, was held pursuant to that request. (Dept. Ex. No. 5)

6. The purposes of the applicant, as stated in its articles of incorporation are:

To promote the social welfare of the community;

To assist disabled and needy war veterans and members of the United States Armed Forces;

To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces;

To conduct programs for religious, charitable, scientific, literary, or educational purposes;

To sponsor or participate in activities of a patriotic nature. (Applicant's Ex. No. 1; Tr. P. 12)

7. Applicant's post was first organized right after World War I. As part of the acquisition of the parcel at issue, the applicant reincorporated the organization in 1990. Applicant's constitution has to be in conjunction with the national constitution of the American Legion. (Tr. pp. 10-22, 25-27; Applicant's Ex. Nos. 1-5)

8. Applicant's by-laws incorporate the objectives as set forth in the national constitution.

The preamble states that the purpose of the American Legion is:

For God and Country, we associate ourselves together for the following purposes: To uphold and defend the Constitution of the United States of America: to maintain law and order; to foster and perpetuate a one hundred percent Americanism; to preserve the memories and incidents of our associations in the Great Wars; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and goodwill on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Dept. Ex. No. 1 pp.10-18; Applicant's Ex. No. 5)

9. Applicant's organization is comprised of African-American veterans. Any veteran would be allowed to join the organization if they wished. (Tr. pp. 10, 46-47, 59)

10. The applicant acquired the parcel in issue by a warranty deed, which conveyed the property to the applicant on September 21, 1990. (Dept. Grp. Ex. No. 1 pp. 6-9; Tr. pp. 23-24)

11. The address of the property at issue is 300 E. Elm Street. It is located on the corner of Elm and Central Streets in Alton, Illinois. (Dept. Grp Ex. No. 1 p. 1; Applicant's Ex. Nos. 6 & 7; Tr. pp. 29-31)

12. Located on the parcel in question is a one-story building that the applicant and its

auxiliary use for meetings. (Dept. Ex. No. 2 p. 1; Applicant's Ex. Nos. 8 & 9; Tr. pp. 31-32)

13. The building is comprised of two meeting rooms, two storage rooms and service areas, two restrooms, a kitchen, and an additional storage room. (Applicant's Ex. No. 8; Tr. pp. 31-35)

14. The applicant's post and committees meet four times a month in the building. (Dept. Ex. No. 1 p. 1; Applicant's Ex. No. 10; Tr. pp. 36-37)

15. The applicant does not operate video games on the subject property. (Applicant's Ex. No. 10; Tr. p. 37)

16. The applicant does not operate poker games on the subject property. (Applicant's Ex. No. 10; Tr. p. 37)

17. The applicant does not have pinball machines on the subject property. (Applicant's Ex. No. 10; Tr. p. 37)

18. The applicant does not have pool tables on the subject property. (Applicant's Ex. No. 10; Tr. p. 37)

19. The applicant does not operate pull-tab games on the subject property. (Applicant's Ex. No. 10; Tr. p. 47)

20. The applicant does not operate bingo on the subject property. (Applicant's Ex. No. 10; Tr. p. 47)

21. The applicant does not operate a bar on the subject property. The applicant has three ministers in its membership that might object to the sale of alcohol and games of chance. (Applicant's Ex. No. 10; Tr. pp. 37, 44, 59-60)

22. The applicant operates no fundraisers on the subject premises. Applicant's revenue comes from dues and assessments from its members and the annual sale of poppies. (Applicant's Ex. No. 13, Tr. pp. 43, 52, 55-59)

23. While there is a kitchen on the premises, there is no full-time staff employed and it is not used regularly. The applicant has a Christmas party, a get-together after the Memorial Day

parade, and activities of that nature wherein the kitchen might be used. (Tr. pp. 37-38, 47-48, 53-54)

24. In the subject building, the applicant stores flags and guns used in parades and funerals. The applicant presents the widow or widower with a check for \$100.00 and an American flag at the death of the member veteran. (Applicant's Ex. No. 9; Tr. pp. 46)

25. The applicant allows other civic and fraternal organizations to use the building for meetings. The applicant has no formal rental agreements nor do they charge rent to the organizations that use the building. The applicant will accept donations from anyone. (Applicant's Ex. Nos. 11 & 12; Tr. pp. 38-43, 48-49; 61-62)

26. Members of the applicant used the building in 1996 for anniversary and birthday receptions and family reunions. The applicant did not charge rent for the use of the building by the members for these purposes. (Applicant's Ex. No. 11; Tr. pp. 41-42)

27. Affiliated with the applicant is the American Legion Auxiliary. The auxiliary is composed of spouses, sisters, or other relatives of veterans. The auxiliary also meets in the building. (Dept. Grp. Ex. No. 1 p. 1; Tr. p. 42)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 ILCS 200/15-145 and

states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

IN INTERPRETING THE ABOVE STATUTORY LANGUAGE, THE SUPREME COURT IN NORTH SHORE POST NO. 21 V. KORZEN, 38 ILL.2D 231 (1967), HELD THAT THE PREDECESSOR STATUTE TO 35 ILCS 200/15-145<sup>1</sup> WAS CONSTITUTIONAL AND THAT THE PROVISION GRANTING AN EXEMPTION TO A VETERAN'S ORGANIZATION REQUIRED THE ORGANIZATION'S UTILIZATION OF THE PROPERTY ENCOMPASS ALL THREE OF THE REQUIRED USES: CIVIC, PATRIOTIC, AND CHARITABLE. REGARDING THE CONSTITUTIONALITY OF THE STATUTE, THE COURT SAID:

It is our view that the legislature, in enumerating the purposes for which property must be used to render it exempt, meant to use the conjunction "and" in its ordinary sense rather than as a disjunctive conjunction which would permit any one of the three stated uses as being sufficient to exempt the property from tax. Therefore, in order for property of veterans' organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes, but also that such use was patriotic and civic. This is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore, section 19.18 pertaining to veterans' organizations is not unconstitutional. *Id.* at 233-234.

IN NORTH SHORE, THE COURT FOUND THAT THE APPLICANT'S USAGE OF THE PROPERTY FOR ITS MEETINGS, WEDDING RECEPTIONS, AND MAINTAINING A BAR ON THE PREMISES NECESSITATED A FINDING BY THE COURT THAT THE PRIMARY USE OF THE PROPERTY WAS NOT EXEMPT. The Supreme Court stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both

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<sup>1</sup> . At the time North Shore Post No. 21 v. Korzen was decided, the exemption for veteran's organizations was found at Ill. Rev. Stat 1963, chap. 120, para. 500.18. The relevant language of the statute is identical to 35 ILCS 200/15-145.

business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; meetings of other veterans organizations for a rental donation of \$15; a bar is maintained primarily for members; pool and billiard facilities are maintained for members and their guests; and a five-room apartment is maintained for a caretaker who pays \$40 per month as caretaker. None of these uses are *per se* patriotic and charitable. *Id.* at 235-236. (Emphasis added.)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one whom asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

There is no dispute that the applicant herein is a veteran's organization. Therefore, the only question before me is whether the activities of the applicant on the parcel in question qualify as charitable, patriotic, and civic. The Supreme Court in North Shore specifically enumerated the same activities that this applicant does on the parcel in question as not *per se* charitable and patriotic. I therefore find that the applicant has not established that its use of the subject property qualifies the parcel for a property tax exemption. There is no dispute that the applicant's endeavors are certainly commendable and benefit a great number of people. The court has stated, however, that the use must be exclusively for charitable purposes, which are also patriotic and civic.

I therefore find that North Shore Post No. 21 is the controlling case law regarding the statutory language at issue and that the applicant has not met its burden of proof to qualify for a property tax exemption.

For the foregoing reasons, I recommend that Madison County Parcel Index No. 23-2-07-

01-13-301-031 remain on the tax rolls for the 1996 assessment year.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge  
June 2, 1998